

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:02CV165-1-MU

ROGER BYRD,

Plaintiff,

v.

UNITED STATES MARSHALL  
SERVICE, et al.,

Defendants.

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**ORDER**

**THIS MATTER** comes before the Court upon Motion to Substitute the United States of America as the Proper Defendant in Place of Defendants Walter Edmisten and Willie Scott, filed September 24, 2002.

On or about April 12, 2002, Plaintiff filed a Complaint in this Court against numerous defendants including former United States Marshal Walter Edmisten and former Warden Willie Scott.

The Complaint alleges failure by the United States Bureau of Prisons (BOP) and the Mecklenburg County Jail to provide adequate medical care to Plaintiff while he was in the custody of the United States Marshal Service (USMS) and the BOP.

If government officials such as the United States Marshal or a BOP warden act within the scope of their employment and are sued on account of those actions for alleged negligent or wrongful acts or omissions, the provisions of 28 U.S.C. § 2679 require that the United States be substituted

in place of the federal employees a the proper defendant with respect to the claims. Section 2679(d)(1) sets forth that “[u]pon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as a party defendant.”

The United States Attorney has certified that Defendants Walter Edmisten and Willie Scott were acting within the scope of their employment in connection with the events alleged in the lawsuit. (Conrad Aff.). Consequently, this Court will substitute the United States as a party in place of Defendants Edmisten and Scott.

**IT IS THEREFORE ORDERED THAT:**

1. Defendants’ Motion to Substitute the United States of America as the Proper Defendant in Place of Defendants Walter Edmisten and Willie Scott is **GRANTED**; and

2. The Clerk is ordered to substitute the United States as a party and dismiss Walter Edmisten and Willie Scott from this case..

**Signed: September 15, 2005**

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
Chief United States District Judge

